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WC 07-291

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By Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o Natek, Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Attention: Wireline Competition Bureau

Re: Consolidated Communications' Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief

Dear Ms. Dortch:

Enclosed for filing are an original and four (4) copies of Consolidated Communications' Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief.

Please date stamp and return the enclosed extra copy of this filing. Should you have any questions, please do not hesitate to contact me at (202) 373-6560.

Respectfully submitted,

Troy F. Tanner

Troy F. Tanner

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief	)	WC Docket No. 07- ____

CONSOLIDATED COMMUNICATIONS PETITION FOR CONVERSION TO PRICE CAP REGULATION AND FOR LIMITED WAIVER RELIEF

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Dated: December 4, 2007

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief	)))))))	WC Docket No. 07-____

CONSOLIDATED COMMUNICATIONS PETITION FOR CONVERSION TO PRICE CAP REGULATION AND FOR LIMITED WAIVER RELIEF

Consolidated Communications Holdings, Inc., on behalf of its incumbent local exchange carrier subsidiaries ("Consolidated"), requests authority to convert its rate-of-return ("ROR") cost study areas to price cap regulation no later than July 1, 2008, and, to the extent necessary, limited waivers of the applicable universal service high-cost support mechanisms to enable Consolidated's successful conversion.[1] Establishing a reasonable pathway for this conversion is in the public interest as it will, among other things: increase consumer welfare by enhancing competition; reduce the overall size of the universal service fund; hold steady or reduce access rates; and provide well established and tested regulatory incentives to encourage Consolidated to maintain and enhance efficient operations.

Consolidated proposes a reasonable approach for conversion to price cap regulation that relies to the largest extent possible upon the framework already established in the *CALLS Order*

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[1] Because of the close interrelationship between the Commission's price cap rules and universal service rules, Consolidated requests that the Commission grant this Petition as a unified whole. Consolidated's request to convert to price cap regulation is conditioned on a grant of the specific universal service waivers requested herein.

("CALLS plan" or "CALLS").[2] As such, the requested waiver relief will put Consolidated in a similar regulatory position to other comparable price cap carriers and would be consistent with the Commission's longstanding policy and practice of promoting efficient forms of regulation. The requested relief is a necessary interim step until the Commission establishes a pathway for conversion in its rules and while it contemplates comprehensive intercarrier compensation and universal service reform.[3]

I. INTRODUCTION AND SUMMARY OF PETITION

Consolidated is a holding company, headquartered in Mattoon, Illinois, that currently has three incumbent LEC subsidiaries.[4] Illinois Consolidated Telephone Company serves a single study area in Illinois consisting of 35 geographically contiguous exchanges serving predominantly small towns and rural areas in an approximately 2,681 square mile area primarily in five central Illinois counties: Coles; Christian; Montgomery; Effingham; and Shelby. Consolidated is

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[2] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"), *aff'd in part, rev 'd in part and remanded in part, Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *on remand,* 18 FCC Rcd 14976 (2003).

[3] *See, e.g., Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) (*"Intercarrier Compensation FNPRM"*); *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) ("*Special Access NPRM*"); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004) (*"Second MAG Further Notice"*); FCC Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, 21 FCC Rcd 9292 (WCB 2006) (*"Reverse Auction PN"*).

[4] Consolidated recently has been authorized by this Commission, subject to obtaining necessary state regulatory approval, to acquire control of North Pittsburgh Telephone Company, a Pennsylvania-based ILEC that is regulated as an average schedule company. *See Domestic Section 214 Authorization Granted*, Public Notice DA 07-4520, rel. Nov. 5, 2007. Consistent with 47 CFR § 61.41(c)(3), Consolidated intends that North Pittsburgh will retain its average schedule status after the acquisition, and will not be affected by the price cap conversion proposed in this Petition.

the incumbent provider of basic telephone services within these exchanges, with approximately 67,799 local exchange access lines, or approximately 25 lines per square mile, as of December 31, 2006. Approximately 62% of Illinois Consolidated's local access lines serve residential customers, and the remainder serve business customers. Illinois Consolidated's business customers are predominantly small retail, commercial, light manufacturing and service industry accounts, as well as universities and hospitals.[5]

Consolidated has two operating subsidiaries in Texas, Consolidated Communications of Texas Company and Consolidated Communications of Fort Bend Company. Each of these companies serves a single study area, and together they cover three principal geographic markets: Lufkin, Conroe, and Katy, Texas, consisting in total of 21 exchanges covering approximately 2,054 square miles, and serving approximately 149,506 local exchange access lines, or approximately 73 lines per square mile, as of December 31, 2006. Approximately 69% of Consolidated's Texas local access lines serve residential customers. Its business customers are predominantly manufacturing and retail industries accounts, and its largest business customers are hospitals, local governments and school districts. The two Texas companies jointly file a single interstate access tariff, and therefore are referred to together as "Consolidated Texas" in this Petition. All three Consolidated study areas qualify as "rural telephone companies" under Section 3(37) of the Communications Act of 1934 (the "Act").[6]

The markets that Consolidated serves are rural and suburban in nature, and in recent years have become subject to fierce competition. Accordingly, Consolidated's focus over the long term is on running its operations efficiently in order to compete effectively rather than on

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[5] *See* Attachment A, Declaration of Michael Shultz at ¶6 ("Shultz Declaration").

[6] Shultz Declaration at ¶6

maximizing universal service and regulated access revenues over the short term. As a result of this focus, Consolidated's existing special access rates are below those of the typical CALLS company and many of its switched access rates are equivalent to or below the price cap target rate prescribed by CALLS.[7] Over time, however, ROR regulation does not provide appropriate incentives for an efficient carrier such as Consolidated. Approval of this Petition will enable Consolidated to gain additional efficiencies that will permit its operating companies to maintain their low access rates.

Consolidated's conversion to a price cap regime will advance Commission goals and serve the public interest in a number of ways. Efficient access pricing mechanisms like price cap regulation generate incentives to optimize a carrier's cost structure and promote competition. The price cap rate structure is far more conducive to efficiency and competition than the ROR rate structure, and price cap regulation accordingly is the Commission's preferred mode of regulation. Because Consolidated is an efficient carrier, price cap regulation will benefit its customers and provide Consolidated with a regulatory structure that delivers appropriate incentives.

A. Consolidated Proposes to Convert to a Total Company Price Cap Structure Under the CALLS Framework.

Section 61.41(a)(3) of the Commission's rules unambiguously permits incumbent local exchange carriers ("ILECs") to elect price cap regulation.[8] Nonetheless, the *CALLS Order*, which promulgated the existing regulatory framework for price cap carriers, does not leave a clear path for a carrier to convert to price cap regulation at this juncture. In fact, the Commission

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[7] *CALLS Order*, 15 FCC Rcd at 13036-35.

[8] 47 C.F.R. § 61.41(a)(3). *See Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786 (1990) (*"LEC Price Cap Order"*) (subsequent history omitted).

has suggested that CALLS is closed to new carriers.[9] The *CALLS Order* dockets remain open, however, and the Commission is considering related intercarrier pricing and universal service reform issues in a variety of proceedings.[10] Still, it is uncertain when, or whether, one or more of these dockets will clarify how ROR carriers can elect and implement price cap regulation.

Pending such clarification, this Petition follows the format proposed by Windstream in its similar petition for conversion to price caps,[11] and establishes a reasonable path for Consolidated to convert its ROR study areas to a form of price cap regulation that is consistent with the Commission's evolving price cap rules. Consolidated does not propose to increase its switched or special access rates in any of the converted study areas as of July 1, 2008. Moreover, the path proposed in this Petition will not burden interstate access support ("IAS"), the explicit universal service support mechanism created in the *CALLS Order*.[12] In fact, the Consolidated proposal would result in an overall reduction in the amount of universal service support Consolidated receives and a corresponding reduction in the overall size of the high-cost fund.

Because the path to price cap regulation and availability of necessary universal service support to a new price cap carrier remain unclear after the *CALLS Order,* Consolidated proposes a reasonable approach to its conversion to price cap regulation that tracks the Windstream

[9] *Second MAG Further Notice*, 19 FCC Rcd at 4163-64.

[10] *See, e.g., Intercarrier Compensation FNPRM; Special Access NPRM; Second MAG Further Notice; Reverse Auction PN.* The CALLS dockets are *Access Charge Reform,* CC Docket No. 96-262; *Price Cap Performance Review for Local Exchange Carriers,* CC Docket No. 94-1; *Low Volume Long Distance Users*, CC Docket No. 99-249; and *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45.

[11] *Windstream Petition For Conversion To Price Cap Regulation And For Limited Waiver Relief,* WC Docket No. 07-171, filed Aug. 6, 2007.

[12] *See CALLS Order*, 15 FCC Rcd at 13039-63.

approach, relying to the largest extent possible upon the existing CALLS framework. As part of the conversion, however, Consolidated will need a limited waiver of the universal service support mechanism to facilitate the conversion of its ROR study areas to a reasonable pricing regime adapted to a carrier electing price cap regulation post-CALLS. The proposed waivers would provide interim relief until such time as the Commission clarifies in a rulemaking how a ROR carrier can convert to price cap regulation.

B. Price Cap Regulation Will Allow Consolidated to Continue Efficient Operations in a Changing Market.

Consolidated is already operating efficiently, and the proposals in this Petition will match a more appropriate form of regulation to Consolidated's operations. Like ILECs everywhere in the United States, Consolidated has been serving declining numbers of access lines. Its line count has declined by 36,084 lines, or 13.6%, from a high of 265,091 at year end 2002, to 229,007 as of June 30, 2007.[13] Consolidated has mitigated the decline in local access lines and increased average revenue per access line by focusing on the following:

Aggressively promoting DSL service with a variety of speeds and price points to meet customer demands;

Introducing IPTV services;

Maintaining excellent customer service standards while actively promoting new services to its customers;

Establishing eight local communications centers across its footprint where customers can meet face-to-face with company service representatives to review services and service needs; and

Keeping a strong local presence in the communities it serves.

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[13] Shultz Declaration at ¶5.

Consolidated has implemented a number of initiatives to gain new local access lines and retain existing local access lines by enhancing the attractiveness of the bundle with new service offerings such as unlimited long distance. It has also looked for ways to enhance current products and introduce new services to insure that it remains competitive and continues to meet its customers' needs.

Consolidated has invested significantly over the last several years in building a technologically advanced network capable of delivering a broad array of reliable, high quality voice, data, and video services to its customers on a cost-effective basis. In 2006, approximately 51% or $32 million of Consolidated's capital investment was in broadband and broadband services such as video and VoIP. It has leveraged its IP backbone network in Illinois and Texas to position itself with a lower cost, better quality and flexible platform that will enable the development and delivery of new broadband applications to its customers. The service options Consolidated is able to provide over its existing network allows it to generate additional revenues per customer.

Finally, Consolidated has made significant operating and management improvements over the last several years. It has centralized many of its business and back office operations into one functional organization with common work groups, processes and systems. By providing these centrally managed resources, Consolidated has allowed its management and customer service functions to focus on the business and to better serve its customers in a cost-effective manner.

As noted above, Consolidated has made all of these changes to be able to compete better in today's marketplace where customers have a variety of choices for telephone service. With its more streamlined and efficient operations, Consolidated is ready for price cap regulation, where it will be rewarded for having an efficient operation, not penalized.

C. Consolidated Price Cap Regulation Conversion Proposal

With the requested waivers, the main elements of the proposed pricing and universal service regime are as follows:

- **Price Cap Structural Rules**: As of the effective date, which should be no later than July 1, 2008, the proposed price cap regulatory structure that would apply to Consolidated's converted study areas would be based on the structural rules established in the *CALLS Order*, but Consolidated would not "join" the universal service support regime applied to price cap carriers in the *CALLS Order*.

- **Switched Access**: Consolidated will convert its ROR switched access rates to the price cap switched access rate structure established in the *CALLS Order* and, for those converted study areas with average traffic sensitive ("ATS") switched access rates (the sum of the local switching and transport components) higher than the carrier target under the *CALLS Order* of \$0.0065 per minute, will reduce those ATS rates to that target level using a transition process consistent with other CALLS companies.[14] Converted study area ATS rates currently below \$0.0065 per minute, however, would remain at their existing rates. Consolidated's composite ATS rates in the study areas to be converted already equate to \$0.0175 per minute and will be reduced further by transition of above target rates to the \$0.0065 target level. Thus, overall, Consolidated's switched access rates under a price cap regime will likely be lower than if Consolidated remains under ROR regulation because of declining access demand and flat revenue requirements.

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[14] *CALLS Order*, 15 FCC Rcd at 13021-22, 13035-36; 47 C.F.R. § 61.3(qq)(3). *See* Shultz Declaration at ¶ 11. The carriers for which the *CALLS Order* prescribed a \$0.0065 target ATS rate will be referenced to throughout as "non-rural price cap" carriers, as opposed to the "primarily rural price cap" carriers referenced in the in the *CALLS Order* that are subject to a \$0.0095 target ATS rate. *CALLS Order*, 15 FCC Rcd at 13035-36.

- **Special Access**: Consolidated will initialize its price cap rates for special access services in the converted study areas at current ROR levels. Unlike the price cap carriers that were initially part of CALLS, and that were permitted to freeze their special access rates in 2004, Consolidated's ROR special access rates have declined steadily over the past few years. As a result, its standard monthly special access rates are now lower than the standard special access rates charged by the typical CALLS company and are significantly lower than the special access rates that Consolidated would be charging currently had it participated in the CALLS plan from the start.[15] Further reductions are not required by the current price cap rules and would unnecessarily penalize Consolidated.

- **Universal Service**: Conversion to price cap regulation would not be feasible without the continued availability of reasonable universal service support consistent with the CALLS plan. Consolidated proposes to continue to receive interstate common line support ("ICLS") for the converted study areas, but the level of support will be calculated like IAS and set at a per line amount. Importantly, Consolidated's total IAS-like funding for those study areas will be less than the total ICLS funding it would otherwise have received as a ROR carrier. Unlike ICLS support under ROR regulation, the IAS-like support Consolidated will receive for a given access line will be lost entirely when it loses a line.[16]

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[15] Rate comparisons to typical CALLS companies are based on month-to-month DS1 and DS3 rates using one channel termination and 10 miles of transport. Consolidated's current ROR DS1 and DS3 weighted average composite rates are 26 percent and 28 percent lower, respectively, than what they would have been under the CALLS plan. *See* Shultz Declaration at ¶12.

[16] Alternatively, the Commission could increase the IAS target over the $650 million currently in the rules to accommodate Consolidated's participation in IAS.

II. CONSOLIDATED'S CONVERSION TO PRICE CAP REGULATION IS IN THE PUBLIC INTEREST

As the Commission explained in the *LEC Price Cap Order*, price cap regulation "permit[s] LECs to migrate their rates toward a set of prices that enhances efficiency," as opposed to ROR regulation, under which "regulators dictate prices on the basis of fully distributed costing principles,"[17] which penalizes efficient carriers like Consolidated. Price cap regulation rewards "companies that become more productive and efficient."[18] This productivity and efficiency ultimately benefits consumers.

Price cap regulation produces these public interest benefits while using fewer regulatory and administrative resources to police carriers than are required to prevent the misallocation of costs under ROR regulation.[19] As the Commission discussed in the *LEC Price Cap Order*:

> Previous orders in this docket have articulated the pressures that a rate of return system places on cost allocation systems... . Indeed, given the incentives rate of return creates for companies to misallocate costs, thereby threatening our policy of ensuring that rates are based on their fully distributed costs, we spend a great deal of our regulatory resources policing our cost allocation systems. Under incentive regulation, prices would no longer be set by reference to a set of fully distributed costs.... Incentive regulation, by in large measure removing the incentive to misallocate costs between services, may mitigate misallocation as a regulatory concern.[20]

Price cap regulation also stimulates residential and business customer demand for telecommunications services.[21] More efficient use of and greater demand for the nationwide tele-

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[17] *LEC Price Cap Order*, 5 FCC Rcd at 6791.

[18] *Id.* at 6787.

[19] *See id.* at 6788.

[20] *Id.* at 6791.

[21] *See id.* at 6792.

communications network, in turn, contributes to overall economic growth by reducing the cost of telecommunications services that are used by other industries to produce goods and services.[22]

These factors also facilitate the development of competition. As the Commission explained:

> In the case of the LECs' interstate services, the optimal form of regulation would largely replicate the competitive outcome. ... The current LEC price cap plan represents, in large part, a program of improving consumer welfare by introducing profit incentives and price constraints that more closely replicate the operation of competition than traditional, rate-of-return regulation.[23]

The public benefits of price cap regulation are especially evident in the post-CALLS environment. The CALLS Order greatly improved the economic benefits of price cap regulation by imposing a cost causative rate structure that drives down usage rates by forcing carriers to recover non-traffic sensitive costs with fixed rates.[24] By reducing implicit subsidies and making them explicit, the post-CALLS rate structure "will be more apparent to the end user," thus encouraging competitive entry and thereby promoting local and long distance competition and more rational investment decisions.[25]

In a price cap case involving Aliant, the Commission specifically noted the benefits of price cap regulation. The Commission found that "[u]nder price cap regulation, the Aliant

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[22] *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, 10 FCC Rcd 8961, 8965 (1995).

[23] *Id.* at 9002.

[24] *CALLS Order*, 15 FCC Rcd at 13017 (discussing the *Access Charge Reform Order*, in which the FCC, "[r]ecognizing that a significant portion of local switching costs . . . do not vary with usage, [] required that such non-traffic sensitive costs be recovered on a flat-rated, rather than usage sensitive basis." *See Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16034 (1997) (subsequent history omitted)).

[25] *CALLS Order*, 15 FCC Rcd at 12964, 12980, 12990-94, 12997-98.

exchanges have reformed their access charges and, therefore, have a more cost causative interstate rate structure," to the benefit of Aliant's customers.[26] A price cap rate structure similarly would enable Consolidated to continue operating efficiently and to respond quickly to competitive pressures, thereby promoting competition.

In spite of its relatively rural service area, Consolidated's efficient operations have resulted in special access rates that are comparable to or lower than those of most rural and mid-size price cap carriers and even RBOC rate levels.[27] Consolidated's competitive rates are a direct result of its continual efforts to optimize its cost structure.

These public benefits will not be fully realized if Consolidated continues to operate under the ROR regulatory regime. The uneconomic incentives imposed by rate-of-return regulation place pressures on carriers to raise their rates in order to meet authorized rates of return as competition increases from wireless and VoIP providers. As a result, at a time when carriers might need to reduce rates to stay competitive, ROR regulation produces incorrect economic incentives to increase rates. Therefore, Consolidated's business planning will become increasingly difficult as it is pulled in different directions by contradictory regulatory incentives. Conversion to price cap regulation under the conditions spelled out in this Petition will allow Consolidated to continue to optimize its cost structure, thereby maximizing efficiency, promoting competition and creating ongoing incentives for Consolidated's network investment.

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[26] *ALLTEL Corp., Petition for Waiver of Section 61.41 of the Commission's Rules*, 16 FCC Rcd 12407, 12409 (CCB 2201) (*"Aliant Waiver Extension")*.

[27] *See* note 15, *supra*.

III. BACKGROUND: THE COMMISSION'S RULES ALLOW CARRIERS TO CONVERT FROM RATE-OF-RETURN TO PRICE CAP REGULATION.

A. The Commission's Rules Allow Carriers To Convert From Rate-Of-Return To Price Cap Regulation, But Fail To Provide A Pathway To Do So.

The Commission's price cap rules, adopted in 1990, unambiguously permit an ILEC to elect price cap regulation (or, in Consolidated's case, to request approval to convert to price cap regulation).[28] The subsequent *CALLS Order*, however, does not identify how a ROR carrier, or, more precisely, ROR study areas, can be converted to price cap regulation. Significant elements of the CALLS scheme, such as the industry-wide initial $2.1 billion switched access rate reduction and the creation of the $650 million IAS fund, were based on the participation of all price cap ILECs as of June 30, 2000.[29] The *CALLS Order* does not expressly address a glide path for ILECs that might elect price cap regulation after that date.[30] Moreover, the pending *Second MAG Further Notice* tentatively found that the CALLS plan was not designed to be open to new ILECs or study areas.[31]

Even if CALLS is closed, however, the Commission's rules permit ROR carriers to elect, or (in the case of Consolidated) request, price cap regulation. As recently as 2006, in waiving the all-or-nothing rule, the Commission expressly gave Windstream's immediate predecessor, New

[28] 47 C.F.R. § 61.41(a)(3).

[29] *See CALLS Order*, 15 FCC Rcd at 12983-84; 47 C.F.R. § 54.801(a) (IAS fund for "areas served by price cap local exchange carriers as of June 30, 2000, is targeted to be $650 million per year"); 47 C.F.R. § 61.48(1)(1) (price cap ILECs required to achieve a total switched access rate Reduction of $2.1 billion in their July 1, 2000 annual access tariff filings, relative to their June 30, 2000 rates).

[30] The *CALLS Order* notes that VALOR and Iowa Telecom were under contract to acquire price cap properties "and will be subject [to] this Order," but does not specify how they must comply. *CALLS Order*, 15 FCC Rcd at 13072 n.589.

[31] *Second MAG Further Notice*, 19 FCC Rcd at 4163-64.

Valor, the opportunity to submit a request for price cap regulation.[32] Moreover, the Commission has never suggested that the price cap election provision, which remains in the Commission's rules, has been limited or modified.[33]

In Consolidated's case, this issue can be remedied by allowing Consolidated to elect a form of price cap regulation utilizing the current post-CALLS price cap rate structure. Consolidated's conversion to price cap regulation would serve the public interest and achieve the goals of the pricing and universal service policies implemented in the *CALLS Order*.

B. The *CALLS Order* Reformed The Price Cap Rate Structure And Reduced Access Rates.

The *CALLS Order* modified the existing price cap regulations -- while leaving the price cap election provision intact -- and referred to the modified rules as the "CALLS Proposal price cap rules."[34] The Commission's recent order dismissing a petition to reconsider the *CALLS Order* observed that those rules remain in effect.[35] Although the CALLS plan has reached the end of its original five-year term, it will continue in effect until it is replaced.[36]

The *CALLS Order* made the CALLS rate structure rules (*e.g.*, Subscriber Line Charge ("SLC") caps, elimination of the residential and single business line Presubscribed Interexchange Carrier Charge ("PICC"), and the separate special access price basket) mandatory for all price

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[32] Valor Communications Group, Inc., Petition for Waiver, 21 FCC Rcd 859, 863 (WCB 2006) ("*New Valor Waiver Order*").

[33] 47 C.F.R. § 61.41(a)(3).

[34] *CALLS Order*, 15 FCC Rcd at 13025.

[35] *See Access Charge Reform*, CC Docket No. 96-262, DA 07-2968, at ¶2 n.8 (rel. Jul. 3. 2007).

[36] *Special Access NPRM*, 20 FCC Rcd at 1995.

cap ILECs.[37] The Commission also required price cap ILECs to choose, within 60 days of release of the *CALLS Order*, whether to accept the CALLS rate level components or submit a forward-looking cost study for the reinitialization of rates.[38] The rate level components included each carrier's share of the industry-wide "up-front reduction" of $2.1 billion in switched access charges, the "X-factors" used to reduce rates, and the switched access usage rate "target" levels for different categories of carriers.

At this time, the CALLS 60-day option period, which was extended briefly, has long since passed.[39] Moreover, some of the CALLS rate level components could not be applied to Consolidated at this time as written. For example, the most significant component, price cap carriers' up-front reduction in switched access rates in 2000, was partly achieved through reductions in carrier common line ("CCL") charges. Consolidated's CCL charges were eliminated in 2001 when the ICLS fund was established in the *MAG Order* to replace the support provided by CCL revenues.[40] The CALLS up-front reduction also was designed to total $2.1 billion for the entire industry, with each price cap carrier absorbing its share.[41] With this reduction entirely implemented in 2000, neither the *CALLS Order* nor the price cap regulations require any similar "up-front" switched access rate reductions at a later time by a new price cap carrier. Neverthe-

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[37] *CALLS Order*, 15 FCC Rcd at 12984.

[38] *Id.* at 12984-85.

[39] *Access Charge Reform*, 15 FCC Rcd 23435, 23437-38 (CCB 2000) (extending 60-day deadline from July 31, 2000 to September 14, 2000).

[40] *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, 19620, 19642, 19644-46 (2001) ("*MAG Order*") (subsequent history omitted) (eliminating CCL charges and replacing CCL revenue with interstate common line support). *See* Shultz Declaration at ¶8.

[41] *CALLS Order*, 15 FCC Rcd at 12983-84.

less, as explained below, Consolidated proposes to enhance the consumer benefits of its conversion to price cap regulation by reducing its switched access rates for study areas where the converted ATS rates are above the $0.0065 target rate established in the *CALLS Order* for the non-rural price cap ILECs.

IV. CONSOLIDATED'S INITIAL PRICE CAP RATES SHOULD BE BASED ON ITS CURRENT RATE-OF-RETURN RATES.

The X-factors established in the *CALLS Order* operated to reduce switched access usage rates to specified target levels and to reduce special access rates over a set period of time. Under the price cap rules, price caps were set at GDP-PI (a measure of the rate of inflation), minus the X-factor. Once switched access rates reached the targets, the CALLS switched access X-factor was adjusted to an inflation offset, effectively freezing switched access rates under the price cap rules. Similarly, on July 1, 2004, the special access X-factor was adjusted to an inflation offset, effectively freezing special access rates.[42]

A. No Further Reduction in Consolidated's Already Reduced Rate-of-Return Special Access Rates is Necessary or Required.

Because the *CALLS Order* froze price cap special access rates in 2004, Consolidated would not be required by the current price cap regulations to reduce its special access rates any further upon conversion to price cap regulation. Moreover, unlike price cap carriers, Consolidated has steadily reduced its ROR special access rates, including during the period after 2003. In fact, its standard monthly ROR special access rates are now below the typical CALLS company standard monthly special access rates after the CALLS participants' four year special

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[42] *Id.* at 13019-21.

access reductions under CALLS.[43] Further, Consolidated's standard monthly ROR special access rates are approximately 28 percent lower than what they would have been at this juncture if its ROR study areas initially had been part of CALLS.[44] Thus, Consolidated's current special access rates are lower than rates that were deemed reasonable under the *CALLS Order* and should not be reduced any further upon the conversion to price cap regulation.

B. Consolidated's Rate-Of-Return Switched Access Rates Are Being Reduced to an Optimum Level for a Non-Rural Price Cap Carrier with Consolidated's Cost Characteristics.

Consolidated's actual ROR switched access charge cumulative reductions since 2002 have totaled $4.3 million, an amount that, by any plausible measure, is far more than the "up-front" reductions that would have been required under CALLS for these study areas if they had been original participants in the CALLS plan.[45] The switched access X-factor under the CALLS plan was initially set at 6.5 percent, and was applied to ATS switched access rates until the ATS rate reached the target for each CALLS category of carrier. For most price cap ILECs (those with an average of more than 19 access lines subject to SLCs per square mile), the ATS target was set at $0.0065 per minute.[46] Overall, Consolidated currently averages about 49 switched access lines

[43] Rate comparisons to average CALLS companies are based on month-to-month DS1 and DS3 rates using one channel termination and 10 miles of transport.

[44] Consolidated's current ROR study area DS1 and DS3 weighed average composite rates are 26 percent and 28 percent lower, respectively, than what would have been charged under the CALLS Plan. *See* Shultz Declaration at ¶12.

[45] *See* Shultz Declaration at ¶8. The *CALLS Order* required participating price cap carrier to make required Reductions partially through Reductions in CCL charges. Consolidated and its predecessors eliminated CCL charges in their ROR study areas in 2001 pursuant to the FCC's *MAG Order* for ROR carriers.

[46] *CALLS Order*, 15 FCC Rcd at 13035.

per square mile companywide, which could further diminish based on industry trends.[47] In converting Consolidated's ROR switched access rates to the CALLS rate structure, the Illinois study area would have ATS rates significantly higher than the non-rural price cap carrier ATS target rate of $0.0065 per minute and the two Texas study areas would have lower ATS rates. The weighted average of the ATS rates for all of the ROR study areas is approximately $0.0175 per minute.[48]

In the Illinois study area where ATS rates are higher than the target, Consolidated proposes to transition those rates down, consistent with the approach taken with regard to the other CALLS companies, to the price cap target of $0.0065 per minute, while leaving lower ATS rates in the two Texas study areas unchanged. Under this proposal, the weighted average ATS rate in the converted study areas would be approximately $0.0061, a 64.82 percent reduction from the current ROR switched access rates,[49] once the target rate is reached.

V. TARGETED PARTIAL RELIEF FROM CERTAIN UNIVERSAL SERVICE RULES WOULD SERVE THE PUBLIC INTEREST BY REDUCING CONSOLIDATED'S LEVEL OF SUPPORT.

Although Consolidated is less reliant on universal service support than the typical rural ILEC, this support remains important. The network expenditures discussed in this Petition depend, in significant part, on continued high-cost support. Consolidated's successful conversion to price cap regulation is inherently intertwined with the efficiencies generated by continued network investment. Consolidated will require continued high-cost universal service fund

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47 Shultz Declaration at ¶10.

48 The composite ATS rate of $0.0175 is made up of an average switched rate per minute of $0.00753, an average transport rate of $0.00781, and an average flat rated transport of $0.00217, with two-thirds of the companies at or below the target rate of $0.0065. *See* Shultz Declaration at ¶10.

49 *See* Shultz Declaration at ¶10.

("USF") support, albeit at reduced levels, in order to realize all of the public interest benefits, discussed above, that will follow its conversion to price cap regulation. Moreover, the network upgrades that depend on USF support will enable Consolidated to continue its deployment of broadband services to rural consumers.[50] Finally, the Commission long ago recognized the need for explicit universal service to replace the implicit support that was originally part of interstate access charges.[51]

A. Consolidated Seeks Partial Relief From Certain USF Rules That Will Result in Continued Support at a Lower Level.

Existing universal service rules do not clearly address whether Consolidated could continue to receive high-cost universal service support to cover interstate access costs (*i.e.*, IAS or ICLS) if it converts to price cap regulation. As a price cap carrier, under the Commission's rules, Consolidated would no longer be eligible for ICLS.[52] The Commission also has tentatively concluded, however, that new carriers converting to price cap regulation will not have access to the $650 million IAS fund established in CALLS.[53] Accordingly, to secure the required high-cost USF support that will assist Consolidated in its continued efforts to invest, upgrade and maintain its largely rural properties, Consolidated requests waiver relief in order to continue its support from the ICLS fund, although as a price cap carrier.

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[50] Although broadband is not yet a supported service, the FCC has recognized that "the network is an integrated facility that may be used to provide both supported and non-supported services," and has committed itself to "ensuring that appropriate policies are in place to encourage the successful deployment of infrastructure capable of delivering advanced and high-speed services." *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15090, 15095-96 (2003).

[51] *See, e.g., CALLS Order*, 15 FCC Rcd at 13043.

[52] *See* 47 C.F.R. § 54.901(a) (ICLS is available only to ROR carriers).

[53] *Second MAG Further Notice*, 19 FCC Rcd at 4163.

Consolidated, however, requests only partial relief from the relevant USF rules in order that it receive *a level of support no higher than the IAS funding that Consolidated would receive per line* if IAS were available to it in 2007 and no higher in the future than that per line level. For administrative convenience and simplicity, Consolidated proposes that the level of per line IAS support for 2007 be calculated only once and then carried forward until the CALLS plan is replaced as part of broader universal service and intercarrier compensation reform.

1. Good Cause Exists For a Partial Waiver of the USF Rules.

Waiver of the Commission's rules is permitted upon a showing of "good cause."[54] Specifically, "[t]he FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest,"[55] or, alternatively, where "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."[56] In determining whether to grant a waiver, the Commission may take into account special considerations of equity or "more effective implementation of overall policy" on an individual basis.[57] As discussed below, strict compliance with the USF rules would be inconsistent with the public interest and would undermine the policy goals of post-CALLS price cap regulation.

[54] 47 C.F.R. § 1.3.

[55] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

[56] *Id.* at 1166.

[57] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

2. Consolidated's Proposed Approach Would Further the Goals of Price Cap Regulation and the High-Cost USF Program.

Under the partial waiver relief proposed by Consolidated, it would receive the same level of high-cost USF support for interstate access costs that any other price cap carrier would receive for 2007 in the same circumstances by virtue of its membership in CALLS, and no more than that level of support going forward. Consolidated would therefore have the same incentives as other price cap carriers, which are eligible for IAS, to become more efficient while investing in its network. Importantly, this approach will not burden the IAS fund, will reduce the level of support to Consolidated, and will reduce the overall size of the USF. Consolidated seeks only a continuation of a portion of its ICLS funding, to be calculated in the same manner as IAS. Those two high-cost funds would remain separate.[58] Consolidated urges the Commission to support this ROR carrier's efforts to switch to the more efficient price cap regime and to ensure that this conversion does not result in unreasonable reductions in high-cost USF support.

Consolidated's proposed approach to continued support at a lower level will have an overall beneficial effect on the high-cost program as a price-cap carrier. Over time, Consolidated would receive significantly less ICLS funding than it would if it had remained partly a ROR carrier.[59] The savings to the USF program proposed in this Petition are an additional significant public interest benefit.[60]

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[58] *See* 47 C.F.R. §§ 54.802(d), 54, 903(b) (separately requiring USAC to collect and distribute IAS funds and ICLS funds).

[59] *See* Shultz Declaration at ¶14. Consolidated's rural and non-rural high cost loop support will be unaffected by its conversion to price caps or by this request. *See* 47 C.F.R. §§ 35.601 *et seq.* (high-cost loop support available to rural carriers); 47 C.F.R. § 54.309 (high-cost model support available to non-rural carriers).

[60] It should also be noted that, unlike IAS, ICLS is not capped, although a reduction in Consolidated's ICLS may result in a reduction in the ICLS per line received by a competitive eligible

(Footnote Continued on Next Page.)

3. Consolidated's Request Is Consistent With Commission Precedent.

This request is consistent with Commission precedent granting partial waiver relief from USF and other rules and determining the level of the partial relief. In the *NECA USF Waiver Order,* for example, the Commission granted a partial waiver of Commission Rule 69.104(q), which provides that if a ROR carrier does not assess the maximum SLC on a line, it may not recover the foregone amount of SLC revenue from the ICLS fund.[61] The Commission partially waived the rule to allow ROR carriers to assess only five SLCs on the 24 channels in a T-1 circuit without foregoing ICLS funding for all 24 channels.[62]

Similarly, in granting partial relief from certain construction requirements in the *Intek Waiver Order,* the Wireless Bureau staff crafted a unique set of criteria for Intek that blended criteria applicable to different categories of licenses.[63] These cases demonstrate that the Commission's waiver authority permits it to craft specific requirements in granting partial waiver relief to address a party's special circumstances.

(Footnote Continued from Previous Page.)

telecommunications carrier serving any of Consolidated's converted study areas. *See* 47 C.F.R. § 54.901(b).

[61] *National Exchange Carrier Association Petition to Amend Section 69.104 of the Commission's Rules*, 19 FCC Rcd 13591, 13604-07(2004) *("NECA USF Waiver Order"). See* 47 C.F.R. § 69.104(q).

[62] *Id.*

[63] *Intek License Acquisition Corp.*, 16 FCC Rcd 16431 (WTB 2001) ("*Intek Waiver Order*"). *See also Lojack Corp.*, 20 FCC Rcd 20497 (WTB 2005) (expanding scope of permitted uses of stolen vehicle recovery system operations through waiver).